

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

DANTE PATTISON,

Plaintiff,

v.

STATE OF NEVADA, et al.,

Defendants.

Case No. 3:14-cv-00020-MMD-VPC

ORDER

**I. SUMMARY**

In separate orders, United States Magistrate Judge Valerie P. Cooke resolved certain pretrial issues, including denial of Plaintiff's motion for appointment of counsel, denial of Plaintiff's request to stay his deposition and denial of his request for waiver of all fees relating to depositions. (Dkt. nos. 82, 103.) Plaintiff has moved for reconsideration by the undersigned. (Dkt. nos. 85, 105, 106.) For the reasons discussed herein, Plaintiff's motions are denied.

**II. STANDARD OF REVIEW**

Magistrate judges are authorized to resolve pretrial matters subject to district court review under a "clearly erroneous or contrary to law" standard. 28 U.S.C. § 636(b)(1)(A); *see also* Fed. R. Civ. P. 72(a); L.R. IB 3-1(a) ("A district judge may reconsider any pretrial matter referred to a magistrate judge in a civil or criminal case pursuant to LR IB 1-3, where it has been shown that the magistrate judge's ruling is clearly erroneous or contrary to law."). "This subsection would also enable the court to delegate some of the more administrative functions to a magistrate judge, such as . . .

1 assistance in the preparation of plans to achieve prompt disposition of cases in the  
 2 court.” *Gomez v. United States*, 490 U.S. 858, 869 (1989). “A finding is clearly erroneous  
 3 when although there is evidence to support it, the reviewing body on the entire evidence  
 4 is left with the definite and firm conviction that a mistake has been committed.” *United*  
 5 *States v. Ressay*, 593 F.3d 1095, 1118 (9th Cir. 2010) (quotation omitted). A magistrate  
 6 judge’s pretrial order issued under 28 U.S.C. § 636(b)(1)(A) is not subject to *de novo*  
 7 review, and the reviewing court “may not simply substitute its judgment for that of the  
 8 deciding court.” *Grimes v. City & County of San Francisco*, 951 F.2d 236, 241 (9th Cir.  
 9 1991).

### 10 **III. DISCUSSION**

#### 11 **A. Appointment of Counsel (dkt. no. 85)**

12 As an initial matter, the Court will address Plaintiff’s motion for an extension of  
 13 time to file a reply in support of his motion for reconsideration relating to denial of his  
 14 request for appointment of counsel. (Dkt. no. 112.) Local Rule IB 3-1(a) only permits an  
 15 objection and a response; it does not provide for the filing of a reply.<sup>1</sup> The Court will  
 16 therefore not entertain a reply. Plaintiff’s motion for extension of time (dkt. no. 112) is  
 17 denied as moot.

18 Plaintiff challenges the Magistrate Judge’s decision to deny his motion for  
 19 appointment of counsel. (Dkt. no. 85.) Generally, a person has no right to counsel in civil  
 20 actions. See *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). However, the  
 21 Court is able to request an attorney for a plaintiff proceeding *in forma pauperis*. 28  
 22 U.S.C. § 1915(e)(1). While Plaintiff moved for counsel to be appointed, the Court’s  
 23 authority is limited to requesting counsel for Plaintiff. Under LR IB 3-1, 28 U.S.C. §  
 24 636(b) and Rule 72, the Court may reconsider a Magistrate Judge’s pre-trial order where

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 26 <sup>1</sup>The electronic filing system automatically generates a reply due date depending  
 27 on the type of response that the filing party selects. Here, the system generated a notice  
 28 with a reply due date when Defendants filed their response to Plaintiff’s motion. (Dkt. no.  
 102.) However, such notice does not give a party the right to file the referenced  
 document when that right is not provided for under LR IB 3-1(a).

1 the order is timely objected to and clearly erroneous or contrary to law. The Court  
2 reviews the Magistrate Judge's order *de novo* but recognizes that the decision to refuse  
3 to request counsel pursuant to 28 U.S.C. § 1915(e)(1) is discretionary. See *Campbell v.*  
4 *Burt*, 141 F.3d 927, 931 (9th Cir.1998).

5 The Court may only request counsel in exceptional circumstances. *Terrell v.*  
6 *Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991). In order to determine whether exceptional  
7 circumstances exist, the Court must consider "the likelihood of success on the merits"  
8 as well as the ability of the plaintiff to articulate his arguments "in light of the complexity  
9 of the legal issues involved." *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009)  
10 (citation omitted). Neither of these considerations is dispositive and the Court must  
11 examine them together. *Id.* (citing *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir.  
12 1986)).

13 Plaintiff argues that he has demonstrated extraordinary circumstances to warrant  
14 appointment of counsel based on his long history of mental illness which qualifies him as  
15 disabled under the Americans with Disabilities Act, his claim that he is the "victim of very  
16 powerful political foes," the nature and complexities of his claims and the difficulty of  
17 conducting and responding to discovery.<sup>2</sup> (Dkt. no. 85 at 1-2, 5-6.)

18 The Magistrate Judge found that the circumstances of this case do not meet the  
19 exceptional circumstances requirement for appointment of counsel. (Dkt. no. 82 at 1-2.)  
20 The Magistrate Judge further observed that Plaintiff has shown he is able to litigate this  
21 case on his own. The Court agrees with the Magistrate Judge. Plaintiff's filings, including  
22 his objections, demonstrate that he is able to clearly articulate his claims and arguments.  
23 Moreover, while Plaintiff has two claims under the First Amendment and the Eighth  
24 Amendment that have survived the screening, he has not sufficiently demonstrated that  
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26 <sup>2</sup>Plaintiff offers a copy of a neuropsychological assessment prepared in 2003 and  
27 amended on 2004 as support for his claim of mental illness. (Dkt. no. 85-1, Exh. A.) At  
28 that time, Plaintiff was diagnosed as having "Schizophrenia, Paranoid type, chronic with  
features of Capgras Syndrome." (Dkt. no. 85-1 at 27.)

1 these claims are likely to succeed. The Court therefore declines to reconsider the  
2 Magistrate Judge's order denying Plaintiff's motion for appointment of counsel.

3 **B. Stay of Plaintiff's Deposition (dkt. no. 105)**

4 Plaintiff contends that the Magistrate Judge granted Defendants' motion to take  
5 his deposition without considering his response. The Magistrate Judge issued an order  
6 granting the motion for leave to take Plaintiff's deposition on the same day his response  
7 was due. (Dkt. no. 80.) As the Magistrate Judge indicated, these types of motions are  
8 routinely granted without briefing. (Dkt. no. 103 at 1.) Defendants have a right to depose  
9 Plaintiff as the party initiating this action and Plaintiff cannot avoid being deposed. (*Id.*)  
10 Plaintiff has not demonstrated that the Magistrate Judge's decision is clearly erroneous  
11 or contrary to law.


12 **C. Deposition Fees (dkt. no. 106)**

13 Plaintiff appears to argue that because he was allowed to proceed *in forma*  
14 *pauperis* in state court before this action was removed, his *in forma pauperis* status  
15 should entitle him to a waiver of fees relating to depositions. However, as the Magistrate  
16 Judge correctly noted in citing to Local Special Rule 1-8, "even assuming *arguendo* that  
17 plaintiff could be considered *in forma pauperis*, an order granting *in forma pauperis*  
18 status does not extend to the expenses of litigation." (Dkt. no. 103 at 1.) Moreover,  
19 Plaintiff's request for waiver of deposition fees is not authorized under 28 U.S.C. § 1915.  
20 See *Tedder v. Odol*, 890 F.2d 210, 211 (9th Cir. 1989) (agreeing with other circuits in  
21 finding that section 1915 does not permit waiver of witness fees) (citations omitted).

22 **IV. CONCLUSION**

23 It is therefore ordered that Plaintiff's motions for reconsideration (dkt. nos. 85,  
24 105, 106) are denied. It is further ordered that Plaintiff's motion for extension of time (dkt.  
25 no. 112) is denied as moot.

26 DATED THIS 31<sup>st</sup> day of July 2015.

27   
28 MIRANDA M. DU  
UNITED STATES DISTRICT JUDGE